

Statute of Limitations - Relation between Uniform Commercial Code and Prior Legislation in Illinois

R. Gutof

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The legislators have eliminated one great problem by abrogating the two property rules. The only other inadequacy of the act may be the prescription of only minimum requirements in the declaration. This thrusts a great responsibility upon the draftsman to take great care in drafting a declaration. The most important covenants he has to include are remedies against uncooperative co-owners, covenants dealing with the day to day use of the common elements, and the consequences of the right of first refusal in conveyancing, mortgaging, devising, and making gifts.

Condominium should continue to grow, however, for two reasons: its economic advantages will attract the public, and legislators have been vigilant and responsible in dealing with it. Within two years, thirty-four states have passed condominium legislation.

C. Bernstein

STATUTE OF LIMITATIONS—RELATION BETWEEN UNIFORM COMMERCIAL CODE AND PRIOR LEGISLATION IN ILLINOIS

In July, 1961, the Illinois legislature adopted the Uniform Commercial Code, effective July, 1962. Under the Code, where an action based upon the breach of a contract of sale has been involuntarily dismissed and the statute of limitations has already run (thus barring a new suit on the same cause of action), the plaintiff is "saved" by the allowance of a six month period in which to commence a new action. The prior Limitations Act establishes a one year period in which to commence such a new action. The apparent conflict between these two statutes presents some interesting problems: (1) Will section 2-725 of the Code repeal section 24a of the Limitations Act by implication since section 2-725 is inconsistent with the earlier statute? (2) If not, does the general repealer provision of the Code repeal section 24a? If it does, Illinois plaintiffs are left with no period in which to commence a new action, except in actions based upon the breach of a contract of sale under the Code. (3) Is there an amendment of section 2-725; and if so, is this amendment *a subject embraced in an act not expressed in the title thereof*, so that section 2-725 violates the Illinois Constitution? (4) And finally, if there is an amendment by implication, does this amendment render section 2-725 unconstitutional as constituting an act which *amends a prior statute without inserting the section amended at length in the new act*?

These and other problems may be resolved by looking at the statutes themselves, the Illinois Constitution and court decisions. Section 2-725

entitled "Statute of Limitations in Contracts for Sale," provides in subsection (3):

Where an action commenced within the time limited by subsection (1)¹ is so terminated as to leave available a remedy by another action for the same breach, such other action may be commenced after the expiration of the time limited and within six months after the termination of the first action unless the termination resulted from voluntary discontinuance or from dismissal for failure or neglect to prosecute.²

Section 24a, the prior Illinois statute dealing with the same subject matter, is entitled "Plaintiff May File New Action Within Year, When," and provides:

In any . . . contract where the time of commencement of any action is limited, if judgment shall be given for the plaintiff, and the same be reversed by writ of error, or upon appeal; or if a verdict pass for the plaintiff, and, upon matter alleged in arrest of judgment, the judgment be given against the plaintiff; or, if the plaintiff has heretofore been nonsuited or shall be nonsuited, then, if the time limited for bringing such action shall have expired during the pendency of such suit, the said plaintiff, his or her heirs, executors, or administrators, as the case shall require, may commence a new action within one year after such judgment reversed or given against the plaintiff, and not after.³

It is, therefore, apparent that section 2-725 and section 24a are in conflict with each other. The two statutes are similar except that section 2-725 is stricter in two respects. First, section 24a provides that the period in which a new action may be instituted is one year after the termination of the first action, while section 2-725 provides that the new action must be instituted within six months after the termination of the first action. Second, under section 2-725, the new action may not be commenced if the termination of the first action resulted from a dismissal for want of prosecution, whereas under section 24a, a dismissal for want of prosecution is regarded as a judgment of involuntary nonsuit,⁴ and a new action may, therefore, be commenced under section 24a within the one year period in such a case.

¹ Subsection (1) provides for a four year statute of limitations.

² ILL. REV. STAT., ch. 26, § 2-725 (1961).

³ ILL. REV. STAT. ch. 83, § 24a (1959).

⁴ In *Sachs v. Ohio Nat. Life Ins. Co.*, 131 F. 2d 134, 136 (1942). The Circuit Court of Appeals stated that, the Illinois authority "implies clearly that the word [nonsuit as used in section 24a] was meant to apply not only to situations where [the] plaintiff has been unable to prove his case or has neglected to proceed to trial of the issues, but to all involuntary judgments of discontinuance or dismissal for want of proof or jurisdiction leaving the merits untouched." For cases holding a dismissal for want of prosecuting to be an involuntary nonsuit see: *Boyce v. Snow*, 187 Ill. 181, 58 N.E. 403 (1900); *Spring Valley Coal Co. v. Patting*, 112 Ill. App. 4 (1904), *aff'd*, 210 Ill. 342, 71 N.E. 371 (1904).

REPEAL BY IMPLICATION

Under the well settled rules of statutory construction, where two statutes concern the same subject matter, the latest action of the legislature must be held controlling, if the two acts cannot be harmonized.⁵ Such a repeal of a statute by implication can occur only where the terms of the latter statute are so repugnant to the former that both cannot stand.⁶ Such is not the case here. Section 2-725 establishes the six month period only as to actions based upon the breach of a contract of sale. Section 24a, however, is a general statute establishing a one year period for all actions, including actions on contracts of sale. Therefore, since the statutes here concerned are not so repugnant to each other that both cannot stand, there can be no repeal of section 24a by implication of its repugnancy with section 2-725.

GENERAL REPEALER

The Uniform Commercial Code provides in the general repealer section that, "all acts and parts of acts inconsistent with this Act are hereby repealed."⁷ However, as the Supreme Court of Illinois said in *Hoyne v. Danisch*, "while the insertion of a general provision in a statute declaring a repeal of all inconsistent acts or parts of acts implies . . . that the new statute is to some extent repugnant to certain laws therefore enacted, the insertion of such a general repealing clause is generally held to add nothing to the repealing effect of the act."⁸ Therefore, whether or not the new statute contains a general repealer section is unimportant. The question still remains whether or not there is, in fact, a conflict; and where there is such a conflict, then the former act, so far as the conflict exists, is repealed or amended by implication.⁹

Because the general repealer section of the Uniform Commercial Code is ineffective in and of itself, and because there is no specific repeal of section 24a, and because there can be no implied repeal of section 24a by its repugnancy with section 2-725, it is necessary to look to the doctrine of implied amendment in order to resolve the conflict. "It has always been a maxim in the construction of statutes that where two acts are seemingly repugnant, they should be so construed, if possible, that the latter one may not operate as a repeal of the former by implication. In all such cases, if a construction can reasonably be given by which both acts will stand it

⁵ *City of Rockford v. Schultz*, 296 Ill. 254, 129 N.E. 865 (1921).

⁶ *People v. Ill. Cent. R.R.*, 314 Ill. 339, 145 N.E. 719 (1924).

⁷ ILL. REV. STAT. ch. 26, §§ 10-103 (1961).

⁸ 264 Ill. 467, 483, 106 N.E. 341, 347 (1914).

⁹ *Struthers v. The People*, 116 Ill. App. 481 (1904).

will be adopted."¹⁰ Thus where two acts cover the same subject, they should be construed, if possible, so that each shall have due effect, and in such case the latter act, or the act varying in some degree the procedure or requirements necessary to obtain the statutory relief is not construed to repeal the former or other act, but is held to be an amendment or modification of it by implication.¹¹ Construing each of the sections here involved to have due effect, section 2-725 would establish a six month period in which to commence a new action where that action is based upon the breach of a contract of sale, while section 24a would be amended by implication to grant a one year period in which to commence a new action where that action is not based upon the breach of a contract of sale.

CONSTITUTIONAL REQUIREMENTS RELATING TO TITLE

This resolution of the conflict, however, appears to run head-on into a constitutional prohibition. The Illinois Constitution provides that:

[I]f any subject shall be embraced in an act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed; and no law shall be revived or amended by reference to its title only, but the law revived, or the section amended, shall be inserted at length in the new act.¹²

This constitutional provision raises two important questions. First, assuming that section 2-725 amends by implication section 24a, does this amendment of section 24a by section 2-725 constitute a subject embraced in an act not expressed in the title thereof, such as to render section 2-725 void? The Supreme Court of Illinois has said that if a statute can be held to be a complete and entire act of legislation on the subject which it purports to deal with, it will be deemed good and not subject to the constitutional prohibition that no subject may be dealt with in a statute which is not expressed in the title thereof.¹³ The title of the Uniform Commercial Code does not indicate that the statute is amendatory of any existing law, nor does it profess, in terms, to amend any other law by reference to its title or by other means. So far as the title is concerned, the Code purports to be an act complete in itself whose purpose is to provide for a uniform commercial law, thus placing it within the exception to the constitutional provision requiring the title of an act to embrace all subjects contained therein.

¹⁰ *City of Rockford v. Schultz*, 296 Ill. 254, 256, 129 N.E. 865, 865 (1921).

¹¹ *Hacken v. Isenberg*, 288 Ill. 589, 124 N.E. 306 (1919).

¹² ILL. CONST. art. 4, § 13.

¹³ *People v. Knopf*, 183 Ill. 410, 56 N.E. 155 (1900).

CONSTITUTIONAL REQUIREMENTS RELATING TO AMENDMENTS

The second and more important constitutional question is the effect of the implied amendment of section 24a by section 2-725. In order to more fully understand this problem, it is necessary to first look at the reasons behind the adoption of the constitutional provision requiring that in the case of an amendment to a prior act, the law as amended must be set forth at length. In *People v. Wright*, the Illinois Supreme Court said that,

the mischief designed to be remedied was the enactment of amendatory statutes in terms so blind that legislators themselves were sometimes deceived in regard to their effect, and the public, from the difficulty in making the necessary examination and comparison, failed to become appraised of the changes made in the laws . . . endless confusion was thus introduced into the law, and the constitution wisely prohibited such legislation.¹⁴

The Illinois constitution does not prohibit amendment by implication, and, therefore, amendments by implication of previous acts are not necessarily within the prohibition of section 13 of article IV.¹⁵ In *People v. Beemsterboer*, the court said that, "the purpose of the constitutional provision [as we have seen] is to avoid confusion arising from patchwork legislation, but does not require practically endless reiteration of amended statutes, nor that, when a new act is passed, all prior acts in any way modified by it shall be published at length in the amendatory act."¹⁶ Therefore, where an act is complete in itself, it does not violate the constitutional provision merely because it repeals, modifies, or amends a former act by implication.¹⁷ In *Co-ordinated Transport, Inc. v. Barrett*, the court said that,

any new provision of law may in some sense be said to amend and change the prior systems of laws, and whenever there is an irreconcilable conflict between two acts the latter one must prevail. To the extent of the conflict the latter act amends the earlier one by implication, and, if the latter act is not amendatory in form and [is] perfect in itself, it is not within the prohibition of the constitution.¹⁸

CONCLUSION

In summary, it may be said that an act complete in itself is not within the evil designed to be remedied by section 13 of article IV of the Illinois

¹⁴ 70 Ill. 388, 397 (1873).

¹⁵ *People v. Chicago & N.W. Ry.*, 16 Ill. 2d 264, 157 N.E. 2d 54 (1959).

¹⁶ 356 Ill. 432, 434, 190 N.E. 920, 922 (1934).

¹⁷ *Holmgren v. City of Moline*, 269 Ill. 248, 109 N.E. 1031 (1915).

¹⁸ 412 Ill. 321, 330, 106 N.E. 2d 510, 515 (1952), *aff'd*, 344 U.S. 583 (1952), *motion for rehearing denied*, 345 U.S. 931 (1952). For a discussion of the classifications of amendatory acts, see *People v. Crossley*, 261 Ill. 78, 103 N.E. 537 (1913).